

PENG BEE SDN BHD

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v.

TEOH LIANG TEH & ORS

COURT OF APPEAL, KUALA LUMPUR

b

SHAIK DAUD ISMAIL JCA

SITI NORMA YAAKOB JCA

HAIDAR MOHD NOOR JCA

[CIVIL APPEAL NO: P-02-568-1995]

17 OCTOBER 2000

c

LIMITATION: Recovery of land - Commencement of limitation period - Accrual of cause of action - Running of time - Whether plaintiff's action for recovery of land time-barred - Whether striking out of plaintiff's action proper - Limitation Act 1953, s. 9(1) - Rules of the High Court 1980, O. 18 r. 19(1)

d

LIMITATION: Contract - Action for specific performance of agreement for sale of land - Whether time-barred - Whether striking out of plaintiff's action proper - Limitation Act 1953, s. 6(1)(a) - Rules of the High Court 1980, O. 18 r. 19(1)

e

CIVIL PROCEDURE: Striking out - Writ and statement of claim - Action for recovery of land or for specific performance of agreement for sale of land - Whether time-barred - Whether striking out of plaintiff's action proper - Limitation Act 1953, ss. 6(1)(a) & 9(1) - Rules of the High Court 1980, O. 18 r. 19(1)

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By a sale and purchase agreement executed in 1980, the plaintiff agreed to purchase some land ('the land') from the 1st to the 4th defendants ('the vendors'). A deposit of 10% of the purchase price was then paid to the vendors. In 1994, the vendors purported to sell the land to the 5th, 6th and 7th defendants. In 1995, the plaintiff commenced an action for specific performance. Upon the vendors' application, the senior assistant registrar struck out the plaintiff's writ and statement of claim under O. 18 r. 19(1) of the Rules of the High Court 1980 ('RHC'). This was the plaintiff's appeal from the decision of the High Court affirming the orders of the senior assistant registrar.

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a Held:
Per Shaik Daud Ismail JCA

b [1] The cause of action arose in 1982 when the vendors notified the plaintiff that they would be unable to sell the land to the plaintiff with vacant possession in accordance with the sale and purchase agreement. Time had started to run from 1982 and the plaintiff's action, commenced as it was in 1995, was time-barred by virtue of s. 9 of the Limitation Act 1953.

[Plaintiff's appeal dismissed.]

c *[Bahasa Malaysia Translation Of Headnotes]*

Melalui perjanjian jualbeli yang disempurnakan dalam tahun 1980, plaintiff bersetuju untuk membeli tanah ('tanah tersebut') daripada defendan pertama, kedua, ketiga dan keempat ('penjual'). Deposit sebanyak 10% dari harga belian telah dibayar kepada penjual. Dalam tahun 1994, penjual telah **d** kononnya menjual tanah tersebut kepada defendan kelima, keenam dan ketujuh. Dalam tahun 1995, plaintiff memulakan tindakan untuk pelaksanaan spesifik. Di atas permohonan penjual, penolong kanan pendaftar telah membatalkan writ dan pernyataan tuntutan plaintiff dibawah A. 18 k. 19(1) Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT'). Ini merupakan rayuan **e** plaintiff terhadap keputusan Mahkamah Tinggi yang mengesahkan perintah penolong kanan pendaftar tersebut.

Diputuskan:
Oleh Shaik Daud Ismail HMR

f [1] Kausa tindakan timbul dalam tahun 1982 apabila penjual memberitahu plaintiff bahawa mereka tidak dapat menjual tanah tersebut kepada plaintiff dengan milikan kosong sebagaimana yang dikehendaki dalam perjanjian jualbeli tersebut. Masa telah mula berjalan dari 1982 dan tindakan plaintiff yang dimulakan dalam tahun 1995 dengan itu dibatasi hadmasa sebagaimana **g** yang diperuntukkan dibawah s. 9 Akta Hadmasa 1953.

[Rayuan plaintiff ditolak.]

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Case(s) referred to:

Nasri v. Mesah [1971] 1 MLJ 32 (refd)

Legislation referred to:

Limitation Act 1953, ss. 6(l)(a), 9

Rules of the High Court 1980, O. 18 rr. 19(l)

For the plaintiff - Teja Singh Penesar; M/s Teja Singh Penesar & Co

For the 1st, 2nd, 3rd and 4th defendants - Mahinder Singh Dulku (Bernard Kok with him); M/s Ban Eng, Annual & Foong

For the 5th, 6th, and 7th defendants - Chua Leng Poh; M/s Khor, Anuar & Khong

[Appeal from High Court, Pulau Pinang; Civil Suit No: 22-6-1995]

Reported by Alex KC Lee

JUDGMENT**Shaik Daud Ismail JCA:**

This appeal is from the decision of the Penang High Court which had confirmed the order of the learned Senior Assistant Registrar in allowing an application by the respondents to strike out the writ and statement of claim filed by the appellant under O. 18 r. 19(l)(a), (b) and/or (c) of the Rules of the High Court, 1980.

Briefly the facts are that on 11 August 1980, by a sale and purchase agreement made between the appellant of the one part and one Teoh Tiang Ming (deceased) together with the 3rd and 4th respondents of the other part, the appellant agreed to purchase three pieces of land known as Holdings No. 81, 82 & 83, Section 1 Town of Butterworth, Province Wellesly North, for a consideration of RM422,525. Pursuant to the said agreement, the appellant paid a sum of RM42,252.50 as deposit and part payment of the purchase price. The balance of the purchase price was to be paid in three instalments the last of such instalments was to be made within 12 months of the date of the execution of the sale and purchase agreement, or within one month from the receipt of a written notice from the 1st to 4th respondents confirming that vacant possession of the said properties could be delivered to the appellant, whichever was the later.

The 1st to 4th respondents subsequently sold the said properties to the 5th, 6th and 7th respondents on 11 April 1994, who soon thereafter lodged a caveat over the properties.

- a* The sale did not go through because the 1st to 4th respondents could not deliver vacant possession. The appellant filed a writ and statement of claim on 13 January 1995 for specific performance and other ancillary orders. The 1st to 4th respondents filed an application for the action to be struck out under O. 18 r. 19(l)(a), (b) & (c) and a similar application was filed thereafter by the 5th to 7th respondents. The 1st to 4th respondents' reasons for striking out were that the claim was statute barred and the action was vexatious and an abuse of the court process.

- c* The 1st to 4th respondents contend that the cause of action arose around 1982 when the deceased Teoh Tiang Ming conveyed to the appellant's representative that he was unable to sell the land with vacant possession, in accordance with the sale and purchase agreement. Pursuant to this a letter dated 7 June 1982, was sent to the appellant's solicitors, proposing to sell the said properties without vacant possession but at a lower price. The appellant did not accept this offer. Therefore, it is contended that the breach of the 1980 agreement, occurred in 1982 when the 1st to 4th respondents failed to persuade the appellant to purchase the properties without vacant possession but at a lower price. It is further contended that this offer was to make substantive variations to the sale and purchase agreement. Since the 1st to 4th respondents could not perform the agreement a breach had thereby occurred. The cause of action had then arisen to enable the appellant to sue the 1st to 4th respondents. As this was a claim for specific performance of a sale and purchase agreement which essentially is a claim based on contract, s. 6(l)(a) of the Limitation Act, 1953 applies, and the action having been commenced more than six years after the cause of action arose, is caught by limitation. The statement of defence filed by the 1st to 4th respondents centered mainly on limitation but the appellant failed to reply.

- g* The issue, therefore, is when did the period of limitation begin to run in this case. It is contended by the learned counsel for the 1st to 4th respondents that, it ran from 1982 when notice was sent to the appellant that the 1st to 4th respondents were unable to give vacant possession pursuant to the terms of the sale and purchase agreement. In *Nasri v. Mesah* [1971] 1 MLJ 32, the appellant claimed specific performance of a sale and purchase agreement dated 5th June, 1947, for the sale of land by the respondent to him. The appellant had paid the agreed price for the land but no document of transfer was executed because of a moratorium then in force over the land. After the expiration of the moratorium on 30 September 1949, the appellant approached the respondent on several

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occasions and requested her to execute the transfer of the land but she failed to do so. Eventually the appellant commenced the action on 3 March 1967. The action was dismissed in the High Court on the ground of limitation.

On appeal the Federal Court in allowing the appeal held that time begins to run for the purpose of limitation from the date of any infringement or threat of infringement of the appellant's right under the agreement.

In the present appeal we agree with the learned counsel for the 1st to 4th respondents that time began to run from the notice dated 7 June 1982, following the inability of the 1st to 4th respondents to give vacant possession. The present action filed on 13 January 1995 - more than 12 years after the cause of action arose, is we say statute barred pursuant to s. 9 of the Limitation Act 1953, (see *Nasri v. Mesah supra*). The action is unmaintainable and is rightly struck out. As for the 5th and 7th respondents, they are subsequent purchasers and they ought not to be made parties to the action as there is no cause of action against them. We had therefore, dismissed the appeal with costs, and ordered the deposit to go to account of costs.

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